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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ISMAEL CORTEZ et al., Plaintiffs and Respondents, v. LANDCARE USA, LLC et al., Defendants and Appellants.	B298044 (Los Angeles County Super. Ct. No. BC687180)

APPEAL from an order of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Reversed.

Rosen Saba, Ryan D. Saba, and Elizabeth L. Bradley, for Defendants and Appellants LandCare USA, LLC and Ivan Tovar.

Schwartz Semerdjian Cauley & Moot; Schwartz Semerdjian Cauley & Evans, Dick A. Semerdjian, Sarah Brite Evans, and Danielle L. Macedo, for Defendants and Appellants Octavio Aguilera and Raphael Diaz Valdivia.

The Green Law Group and Matthew T. Bechtel, for Plaintiff and Respondent Ismael Cortez.

INTRODUCTION

Ismael Cortez filed this action against his former employer, LandCare USA, LLC, and his former supervisor, Ivan Tovar (collectively, LandCare), asserting a cause of action under the Private Attorneys General Act (PAGA) on behalf of himself and similarly situated employees. Counsel for Cortez, The Green Law Group, asked counsel for LandCare, Rosen Saba, to provide the contact information for five potentially aggrieved LandCare employees. Rosen Saba told Green Law that Rosen Saba also represented the five employees. When the trial court learned of Rosen Saba's statement and expressed concern that Rosen Saba represented both LandCare and potentially aggrieved employees, Rosen Saba retracted its statement and told Green Law it did not represent the employees. A different law firm, Schwartz Semerdjian Cauley & Moot, now Schwartz Semerdjian Cauley & Evans, subsequently informed Green Law it represented two of the five potentially aggrieved employees, Octavio Aguilera and Raphael Diaz Valdivia.

Cortez filed a motion to disqualify Rosen Saba from representing LandCare and to disqualify Schwartz Semerdjian from representing the employees. The trial court granted the motion and disqualified both law firms. LandCare, Aguilera, and Valdivia appeal. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Cortez Sues His Former Employer Under PAGA*

Cortez filed this action alleging LandCare did not allow him and other employees to take rest breaks and did not pay him

and other employees for all hours worked. Cortez asserted a single cause of action under PAGA to recover civil penalties and underpaid wages on behalf of himself and other similarly situated employees.

LandCare filed a motion to strike the complaint, arguing that trying the PAGA claim would be unmanageable because there were individual issues regarding the nature of each aggrieved employee's working conditions. In support of the motion, LandCare submitted nearly identical declarations from five LandCare USA employees, each of whom stated LandCare always permitted him to take rest breaks and paid him for all hours worked. While the motion was pending, Jamie Stein of Green Law sent an email to Ryan Saba of Rosen Saba asking LandCare to provide contact information for the five employees. Saba responded in an email that he represented the employees and that he would make them available for a deposition.

Cortez filed an ex parte application for a temporary restraining order and a preliminary injunction prohibiting Rosen Saba and LandCare from communicating with potentially aggrieved employees about the case. In opposition to the motion, LandCare argued primarily that the law did not prohibit it from communicating with its employees about a PAGA action, but in a footnote LandCare also argued that Cortez's request was "ridiculous" because the "individuals are clients of Rosen Saba . . . ." In a supplemental brief LandCare argued that the rules of professional conduct did not prohibit Rosen Saba from concurrently representing LandCare and the potentially aggrieved employees in a PAGA action.

The trial court denied LandCare's motion to strike and Cortez's ex parte application. The court declined to rule whether

Rosen Saba could represent both LandCare and potentially aggrieved employees, stating that "would more properly be addressed through a discovery motion or a motion to disqualify" but that the court was "very skeptical of the proposition that a firm may, consistent with its ethical obligations, represent both an employer and putative 'aggrieved employees' in a PAGA action, where the latter stand to obtain substantial remuneration directly from the former if the PAGA plaintiff prevails." On February 1, 2019, two days after the court's order, Saba sent Stein an email stating: "I was mistaken when I stated 'our firm represents these individuals.' What I meant to say, is that our firm will coordinate with these individuals and any other LandCare employee so that the individuals will appear for a deposition, upon your request."

Cortez served deposition notices for Aguilera, Valdivia, and one other employee who submitted a declaration in support of LandCare's motion to strike. On February 11, 2019 Sarah Evans of Schwartz Semerdjian sent Green Law an email stating her firm would "likely represent" Valdivia and Aguilera at the depositions, and on February 13 she confirmed the firm would represent them.[1] Evans and Schwartz Semerdjian previously represented LandCare in litigation, including as recently as 2018. A few days after receiving Evans's email, Jeff Coyner of Green Law spoke with Evans. During their conversation Evans would not state whether LandCare was paying for, or had referred Aguilera and Valdivia to, Schwartz Semerdjian to represent the

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[1] Evans stated that the third employee did not currently work at LandCare but anticipated returning and that once he returned she would schedule a date for his deposition. She did not state whether Schwartz Semerdjian would represent him.

employees in their depositions, asserting the information was protected by the attorney-client privilege.

B. *Cortez Moves To Disqualify Rosen Saba and Schwartz Semerdjian*

Cortez filed a motion to disqualify Rosen Saba from representing LandCare and to disqualify Schwartz Semerdjian from representing Aguilera, Valdivia, and other potentially aggrieved employees. Cortez argued Rosen Saba could not ethically represent LandCare because Rosen Saba had concurrently represented both LandCare and potentially aggrieved employees with interests adverse to LandCare in this action. Cortez argued Schwartz Semerdjian could not represent any aggrieved employees, including Aguilera and Valdivia, because LandCare was Schwartz Semerdjian's former client, LandCare's interests were adverse to the employees, and LandCare was paying Schwartz Semerdjian to represent the employees so that LandCare could "control, limit and interfere with the content of the employees' statements . . . ."

In opposition to the motion to disqualify, LandCare argued Rosen Saba could represent LandCare because, despite Rosen Saba's prior (subsequently retracted) statements to Green Law and the court, Rosen Saba did not have and never had an attorney-client relationship with any of the potentially aggrieved employees. Saba stated in his declaration his firm did "not have an attorney-client relationship with any of" the five employees. Francesca Dioguardi, an associate at Rosen Saba who interviewed the five employees and obtained their declarations, stated: "At no time did I engage in any privileged

communications with any potentially aggrieved employees, including the [five] declarants."

Aguilera and Valdivia argued Schwartz Semerdjian could represent them because Schwartz Semerdjian no longer represented LandCare in any pending action and because Schwartz Semerdjian complied with all of its ethical obligations. Evans submitted a declaration stating that Aguilera and Valdivia gave informed written consent to the representation after Evans disclosed Schwartz Semerdjian's prior representation of LandCare and provided them "assurances that [a] third-party payor arrangement [would] not interfere" with Schwartz Semerdjian's independent professional judgment. Evans, however, did not identify the purported third party paying Schwartz Semerdjian's fees, nor did she provide any specifics about what she disclosed to Aguilera and Valdivia before they gave written consent to the representation. Aguilera, Valdivia, and LandCare also argued that, regardless of any conflicts of interest, Cortez did not have standing to disqualify their respective attorneys because Cortez was not a prior client of either Rosen Saba or Schwartz Semerdjian.

The trial court granted Cortez's motion, disqualified Rosen Saba from representing LandCare, and disqualified Schwartz Semerdjian from representing Aguilera, Valdivia and other potentially aggrieved employees. The court found that Rosen Saba's prior statements showed it had an attorney-client relationship with Aguilera and Valdivia and that the firm's retraction of its prior statements "carrie[d] little weight." The court ruled Rosen Saba could not represent both LandCare and potentially aggrieved employees because the employees "stand to

obtain substantial remuneration directly from [LandCare] if [Cortez] prevails."

With respect to Schwartz Semerdjian, the court found that, given Evans's statement she disclosed a third-party payor arrangement to Aguilera and Valdivia, the "only plausible explanation" was that LandCare was paying for Schwartz Semerdjian to represent the employees. The court concluded that, under rule 1.8.6(a) of the Rules of Professional Conduct,[2] Schwartz Semerdjian could not maintain its independent professional judgment representing potentially aggrieved employees because Schwartz Semerdjian had previously represented LandCare in other actions and LandCare was paying the employees' attorneys' fees in this action. The court ruled that Cortez had standing to disqualify both Rosen Saba and Schwartz Semerdjian because the firms' ethical violations were "manifest and glaring" and impacted Cortez's "interest in a just and lawful determination of his . . . claims." LandCare, Aguilera, and Valdivia timely appealed.

DISCUSSION

A. *Standard of Review*

"'An order on a motion to disqualify counsel is directly appealable.'" (*Jarvis v. Jarvis* (2019) 33 Cal.App.5th 113, 128; see *Lynn v. George* (2017) 15 Cal.App.5th 630, 633, fn. 1.) "A trial court's decision to grant or deny a motion to disqualify counsel is generally reviewed for abuse of discretion." (*Wu v. O'Gara Coach Co., LLC* (2019) 38 Cal.App.5th 1069, 1079; see *People v. Suff*

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[2] References to rules are to the Rules of Professional Conduct.

(2014) 58 Cal.4th 1013, 1038; *In re Charlisse C.* (2008) 45 Cal.4th 145, 159.) "As to disputed factual issues, a reviewing court's role is simply to determine whether substantial evidence supports the trial court's findings of fact . . . . As to the trial court's conclusions of law, however, review is de novo . . . ." (*In re Charlisse C.*, at p. 159; accord, *Doe v. Yim* (2020) 55 Cal.App.5th 573, 581; *Wu*, at p. 1079.) "[W]here there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law." (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144; accord, *Wu*, at p. 1079; *Lynn,* at p. 636.)

B. *The Trial Court Erred in Disqualifying Rosen Saba*

LandCare does not argue Rosen Saba could have represented in this action both LandCare and the potentially aggrieved employees Rosen Saba initially stated it represented. Indeed, it appears that Rosen Saba either never represented the employees (LandCare's version) or ceased representing them (Cortez's version) because of this very concern. Instead, LandCare argues the trial court erred in basing its finding that Rosen Saba had an attorney-client relationship with the potentially aggrieved employees on the evidence (1) Saba told Stein that Rosen Saba represented the employees and (2) Rosen Saba stated in LandCare's opposition to Cortez's application for a temporary restraining order that the employees were its clients (and asserted in a supplemental opposition it could represent them). LandCare's argument is that Rosen Saba never represented the employees and that its three statements to the contrary were mistakes and were not substantial evidence of an attorney-client relationship. Cortez argues the two statements in

the court filings were judicial admissions "that conclusively establishe[d] the conflicted attorney-client relationship."[3] We agree Rosen Saba's statements were not substantial evidence of an attorney-client relationship, and reject Cortez's argument they were judicial admissions.[4]

Under rule 1.7(a), a "lawyer shall not, without informed written consent from each client, . . . represent a client if the representation is directly adverse to another client in the same or a separate matter." "'The primary value at stake'" where an attorney represents clients with directly adverse interests "'is the attorney's duty—and the client's legitimate expectation—of *loyalty* . . . .'" (*In re Charlisse C.*, *supra*, 45 Cal.4th at p. 160; accord, *Jarvis v. Jarvis*, *supra*, 33 Cal.App.5th at p. 130.) "Because a conflict involving an attorney's duty of loyalty is '[t]he most egregious' kind of conflict . . . '[w]ith few exceptions,

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[3] Cortez did not argue in the trial court, and does not argue on appeal, that Rosen Saba should be disqualified because of its conduct in interviewing and obtaining declarations from the potentially aggrieved employees. Cortez argued (and argues) only that Rosen Saba should be disqualified because the firm admitted it represented the employees, whose interests are adverse to LandCare. Cortez argues that the "circumstances surrounding the interviews [are] also consistent with an attorney-client relationship," but not that Rosen Saba should be disqualified because they interviewed the employees. Similarly, neither side has briefed the issue whether an attorney for an employer may represent potentially aggrieved employees in a representative action under PAGA.

[4] We assume, without deciding, that Cortez has standing to file a motion to disqualify Rosen Saba from representing LandCare.

disqualification [in a case of simultaneous representation] follows automatically, regardless of whether the simultaneous representations have anything in common or present any risk that confidences obtained in one matter would be used in the other.'" (*In re Charlisse C.*, at p. 160; accord, *Jarvis*, at p. 130; see *Kim v. The True Church Members of Holy Hill Community Church* (2015) 236 Cal.App.4th 1435, 1453.) Moreover, "'a law firm that knowingly undertakes adverse concurrent representation may not avoid [automatic] disqualification by withdrawing from the representation of the less favored client . . . .'" (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 490; see *Truck Ins. Exchange v. Fireman's Fund Ins. Co.* (1992) 6 Cal.App.4th 1050, 1057.)

An attorney "represents a client—for purposes of a conflict of interest analysis—when the attorney knowingly obtains material confidential information from the client and renders legal advice or services as a result." (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.*, *supra*, 20 Cal.4th at p. 1148; accord, *Med-Trans Corp., Inc. v. City of California City* (2007) 156 Cal.App.4th 655, 667.) "An attorney-client relationship can only be created by contract, express or implied." (*Shen v. Miller* (2012) 212 Cal.App.4th 48, 57; see *Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729.) Therefore, "'[i]ntent and conduct are critical to the formation of an attorney-client relationship.'" (*Shen,* at p. 57; see *Canton Poultry & Deli, Inc. v. Stockwell, Harris, Widom & Woolverton* (2003) 109 Cal.App.4th 1219, 1228.) The relationship "is not created by the unilateral declaration of one party to the relationship." (*Koo,* at p. 729.)

Rosen Saba's statements that it represented the potentially aggrieved employees were unilateral statements showing, at most, that Rosen Saba believed, at least for a short period of time, it represented the employees. The statements were not substantial evidence of an attorney-client relationship. (See *Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1010 ["a plaintiff cannot unilaterally establish an attorney-client relationship, and its hindsight 'beliefs' that such a relationship existed are thus legally irrelevant" because "it is the intent and conduct of the parties that control the question"]; *Fox v. Pollack* (1986) 181 Cal.App.3d 954, 959 [individuals' beliefs that an attorney represents them, "unless reasonably induced by representations or conduct of [the attorney], are not sufficient to create the attorney-client relationship; they cannot establish it unilaterally"].) Rosen Saba's statements did not show the aggrieved employees intended to retain Rosen Saba as their attorneys, that Rosen Saba obtained confidential information from the employees, or that Rosen Saba provided legal advice to the employees. (Cf. *Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 117-119 [evidence showed an attorney client-relationship where the individual testified in her deposition, and the lawyer stated in his declaration, that the individual had sought, and the lawyer provided, legal advice].)

Koo v. Rubio's Restaurants Inc., *supra*, 109 Cal.App.4th 719, which involved a similar situation, shows why disqualification is not appropriate here. In *Koo* an employee filed a class action against his employer on behalf of himself and other managers of the employer's restaurants. (*Id.* at p. 724.) The employee filed a motion to compel the employer to provide contact information for the managers. In opposition to the motion the

attorney for the employer submitted a declaration stating: "'Rubio's has retained my law firm to represent all of its district managers, general managers, and assistant managers in connection with this lawsuit. As such, my firm represents all current managerial employees of [the employer].'" (*Id.* at p. 725.) The employer's attorney later clarified that he only had an attorney-client relationship with the employer and that he represented managers only in their capacity as representatives of the employer. The court in *Koo* reversed an order disqualifying the attorney from representing the employer, concluding there was no substantial evidence the attorney represented the managers because there was no evidence the managers agreed to retain the law firm to represent them in their individual capacities, and the attorney's unilateral declaration "did not, by itself, create the attorney-client relationship required for disqualification." (*Id.* at p. 732.) Here, as in *Koo*, there is no evidence the potentially aggrieved employees agreed to retain Rosen Saba to represent them. Saba's unilateral and quickly corrected statements to Green Law and the court that it represented the employees did not create an attorney-client relationship.

That is not to say an attorney's conduct is never evidence of an attorney-client relationship. In particular, "the act of making a court appearance on behalf of a party creates a presumption that the attorney is authorized to do so, and hence is strongly presumptive of an attorney-client relationship." (*Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 446; see *Blue Water Sunset, LLC v. Markowitz*, *supra*, 192 Cal.App.4th at pp. 487-488 [preparing a demurrer and appearing in court on behalf of a company created an attorney-client relationship];

Clark Equipment Co. v. Wheat (1979) 92 Cal.App.3d 503, 523 [“‘“it is presumed that an attorney appearing and acting for a party to a cause has authority to do so, and to do all other acts necessary or incidental to the proper conduct of the case”’”].) Rosen Saba, however, did not make a court appearance or file anything on behalf of the aggrieved employees. Rosen Saba opposed Cortez’s request for a temporary restraining order on behalf of LandCare, not the employees. And, at the time LandCare filed the opposition, none of the aggrieved employees was a party to the action or subject to a subpoena or a notice to appear for deposition. Because Rosen Saba was not appearing on behalf of the employees, its statement that it represented the employees did not raise a presumption the employees knew of or had authorized Rosen Saba to make the statement. The trial court erred in ruling that the statements showed Rosen Saba represented the potentially aggrieved employees and that such representation required disqualification.

Nor was Rosen Saba’s statement in LandCare’s opposition to Cortez’s application for a temporary restraining order that it represented the potentially aggrieved employees a judicial admission. “A judicial admission is an unequivocal concession of the truth of a matter . . . .” (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1249; see *Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 451.) Admissions “may be made in a pleading, by stipulation during trial, or by response to request for admission” (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746), and the facts established in judicial admissions “‘“are effectively removed as issues from the litigation, and may not be contradicted”’” by the person who provides the admission. (*Barsegian*, at p. 451; see *Minish v.*

Hanuman Fellowship (2013) 214 Cal.App.4th 437, 456; *Myers*, at p. 746.) But "'[n]ot every document filed by a party constitutes a pleading from which a judicial admission may be extracted.'" (*Humane Society of U.S.*, at p. 1249; *Myers*, at p. 746.)

Rosen Saba stated it represented the aggrieved employees in a footnote of an unsworn memorandum of points and authorities prepared and filed on behalf of LandCare. In LandCare's supplemental brief Rosen Saba argued in passing it could represent the employees, without offering any details of such a representation (or even reaffirming it in fact represented the employees). LandCare's primary purpose in filing the memorandum and supplemental brief was to argue that it did not act improperly in contacting the potentially aggrieved employees and that Cortez was not entitled to an injunction. The tangential statements about Rosen Saba's representation of potentially aggrieved employees were not the type of formal allegations that amount to judicial admissions. (See *Humane Society of U.S. v. Superior Court*, *supra*, 214 Cal.App.4th at p. 1249 [statement in an unsworn memorandum of points and authorities prepared and filed by counsel was not a judicial admission]; *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 37 [party's "attempt to elevate an unsworn statement made as part of the points and authorities supporting a motion to the level of a judicial admission is unfounded"]; *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1090 [information in memoranda of points and authorities prepared and filed by counsel was not evidence].)

C. *The Trial Court Erred in Disqualifying Schwartz Semerdjian*

The trial court inferred, and Aguilera and Valdivia have admitted on appeal, that LandCare is paying Schwartz Semerdjian to represent them. On appeal the parties disagree whether LandCare's payment of Schwartz Semerdjian's fees, without more, requires Schwartz Semerdjian's disqualification. It does not.

Rule 1.8.6 provides that a "lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless" there is "no interference with the lawyer's independent professional judgment or with the lawyer-client relationship" and "the lawyer obtains the client's informed written consent . . . ."[5] (Rule 1.8.6(a), (c).) The trial court did not find Schwartz Semerdjian failed to obtain Aguilera's and Valdivia's informed written consent to the representation.[6] Nor did the trial court find, or does Cortez argue, LandCare took any specific action that interfered with

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[5] Cortez does not cite any authority for the proposition that disqualification is an appropriate remedy for failure to comply with rule 1.8.6(a). We assume, without deciding, that it can be and that Cortez has standing to raise the issue. (Cf. *In re Marriage of Murchison* (2016) 245 Cal.App.4th 847, 851-852.)

[6] In the trial court Cortez argued Evans's declaration was not sufficient to show that Schwartz Semerdjian actually disclosed the material terms of the third-party payor arrangement or that Aguilera and Valdivia gave their informed written consent. Cortez does not make this argument on appeal. The depositions of Aguilera, Valdivia, and the other three potentially aggrieved employees, if Cortez decides to take them, may provide some evidence on this issue.

Schwartz Semerdjian's independent professional judgment or its representation of Aguilera and Valdivia. Instead, the trial court ruled that, because Schwartz Semerdjian previously represented LandCare, and because LandCare was a party to an action in which Aguilera and Valdivia stood to recover if Cortez prevailed, it was not reasonable to expect Schwartz Semerdjian to exercise independent professional judgment when representing Aguilera and Valdivia.

But contrary to the trial court's ruling and Cortez's assertion, that LandCare is paying Schwartz Semerdjian's fees does not establish as a matter of law Schwartz Semerdjian cannot exercise independent professional judgment in representing Aguilera, Valdivia, or other employees. Of course, Schwartz Semerdjian may have an incentive to appease LandCare rather than its clients. (See *Sharp v. Next Entertainment Inc.* (2008) 163 Cal.App.4th 410, 428-429 (*Sharp*) ["'when a third party pays for a lawyer's service to a client . . . there is [a] danger that the lawyer will tailor his [or her] representation to please the payor rather than the client'"].) But that is always a risk when a person other than the client pays the client's attorney's fees, and the rules of professional conduct generally permit the arrangement with the client's informed written consent. (See rule 1.8.6(c).) And even though the "'distraction can become more pronounced if the lawyer hopes to be rehired by the same payor on a recurrent basis'" (*Sharp,* at p. 429), the existence of a prior relationship between the lawyer and the third-party payor does not prohibit the lawyer from representing the client. (See *id*. at pp. 420, 435-436 [law firm was not prohibited from representing the plaintiffs in a class action where a labor union, which the law firm represented in

other matters and which "had been involved in investigating and providing material support" for the action, paid the law firm's legal fees]; *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1397-1398, 1415 [insurer who designated its in-house attorney to represent an insured did not interfere with the attorney's professional judgment or restrict or limit the attorney's ability to represent the insured where there was no evidence the insurer "directed or controlled" the representation].)

That LandCare's interests were potentially adverse to the interests of Schwartz Semerdjian's clients, Aguilera and Valdivia, may have increased the likelihood Schwartz Semerdjian would represent the employees in a way that might help LandCare. But this additional fact does not, without more, show that LandCare would necessarily interfere with Schwartz Semerdjian's representation of Aguilera and Valdivia for purposes of rule 1.8.6(a). (Cf. Chin et al., California Practice Guide: Employment Litigation (Rutter Group 2019) ¶ 2:155 ["If joint representation is not feasible or proper, the employer may consider offering to pay for separate counsel to represent a supervisor or coworker who is charged with wrongdoing and joined as a codefendant with the employer."].) A "'court should start with the presumption that, unless proven otherwise, lawyers will behave in an ethical manner.'" (*Addam v. Superior Court* (2004) 116 Cal.App.4th 368, 372; accord, *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 851; see *Sharp*, *supra*, 163 Cal.App.4th at p. 435 ["we cannot assume that [a law firm] will fail to abide by its ethical obligations"].) Cortez provided no evidence LandCare has done anything to influence or interfere with Schwartz Semerdjian's representation of Aguilera and Valdivia.

Moreover, disqualifying Schwartz Semerdjian would be unfair to Aguilera and Valdivia. (Cf. *Sharp, supra*, 163 Cal.App.4th at p. 424 [because "'[m]otions to disqualify counsel are especially prone to tactical abuse, . . . these motions must be examined "carefully to ensure that literalism does not deny the parties substantial justice"'"].) As the court in *Sharp* explained, although "there may be a conflict of interest where . . . a third party is paying for the attorney to represent another person or entity," giving "'"effect to a client's consent to a conflicting representation"'" is a "'sensible feature of the law, for it recognizes the autonomy of individuals to make reasoned judgments about the trade-offs that are at stake.' [Citation.] Once the client has been provided with sufficient information about the situation, the client can make a rational choice." (*Id.* at pp. 429-430; accord *Antelope Valley Groundwater Cases* (2018) 30 Cal.App.5th 602, 617.)

There is no evidence or suggestion that anyone, other than Cortez, objects to Schwartz Semerdjian representing Valdivia and Aguilera. Were we to affirm the order disqualifying Schwartz Semerdjian simply because LandCare is paying Schwartz Semerdjian's fees, despite Aguilera's and Valdivia's informed written consent and without evidence the financial arrangement was interfering with Schwartz Semerdjian's independent professional judgment, Aguilera and Valdivia would face an untenable choice: They either would have to pay for an attorney despite LandCare's willingness to pay, or (more likely) they would have to be deposed without representation. (See *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 807 ["the policy considerations to be taken into consideration in a motion for disqualification" include "a client's right to chosen

counsel" and "the financial burden on a client to replace disqualified counsel"]; *Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.4th 210, 218-219 [same].) The rules of professional conduct "cannot be construed so as to hurt class members, under the guise of protecting them." (*Sharp*, *supra*, 163 Cal.App.4th at p. 435.) The same is true for the potentially aggrieved employees in a PAGA action.[7]

DISPOSITION

The order is reversed. LandCare USA, Tovar, Aguilera, and Valdivia, are to recover their costs on appeal.

SEGAL, Acting P. J.

We concur:

FEUER, J. DILLON, J. *

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[7] In a class action a member who disagrees with the named plaintiff's claims and wants to be represented by the defendant's counsel, or by counsel paid by the defendant, may opt out of the class. There is no similar procedural option for aggrieved employees in a PAGA action.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.